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Decision 05-09-047 September 22, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company to Establish Market Values for and to Sell its Richmond-to-Pittsburg Fuel Oil Pipeline Utilities Code Sections 367(b) and 851. (U 39 M)	Application 00-05-035 (Filed May 15, 2000, amended May 6, 2004 and September 9, 2004)
Application of San Pablo Bay Pipeline Company to Own and Operate the Richmond-to-Pittsburg Fuel Oil Pipeline and Hercules Pump Station as a Common Carrier Pipeline Corporation Pursuant to the Provisions of Public Utilities Code Sections 216 and 228.	Application 00-12-008 (Filed December 12, 2000, amended May 6, 2004 and September 9, 2004)

ORDER DENYING REHEARING OF DECISION (D.) 05-07-016

On August 1, 2005 Chevron U.S.A. Inc. ("Chevron") filed an application for rehearing of Decision (D.) 05-07-016. D.05-07-016 ("Decision") grants the consolidated applications of Pacific Gas and Electric Company ("PG&E") to sell Richmond-to-Pittsburg fuel oil pipelines and associated facilities, and San Pablo Bay Pipeline Company ("SPBPC") to own and operate these pipeline assets as a common carrier. The sale and transfer applications, as approved by the Commission, include: (1) abandonment of the Hercules Pump Station; (2) sale of 44.2 acres of pump station land to the Santa Clara Valley Housing Group, Inc. ("SCVHG") for probable eventual development; and (3) sale of fuel oil pipelines and facilities to SPBPC, for SPBPC to own and operate a fuel oil pipeline, and (4) acquisition of SPBPC by Shell Pipeline Company ("Shell").

We have carefully considered all the arguments presented by Chevron and are of the opinion that no grounds for rehearing have been demonstrated. Therefore, we are denying the application for rehearing.

I. DISCUSSION

A. Sufficiency of Section 851 Discussion

Chevron challenges the Decision's conclusion that PG&E's application to transfer ownership of the Pipeline and Pump Station assets pursuant to section 851[1] is in the public interest. According to Chevron, the Decision errs in neglecting to consider how the unused pipeline will be operated after the transfer, and whether and how new pumping facilities will be built. Chevron also argues that the Decision fails to assess the "remediation and redevelopment" that SCVHG may undertake after the transfer is done. For these reasons, Chevron suggests that the Commission's public interest findings are not based on sufficient evidence.

These arguments are unconvincing for two main reasons. First, the Decision exhaustively and adequately supports and explains why the pipeline transfer is in the public interest. Second, Chevron misconstrues the purpose and scope of section 851.

Contrary to Chevron's contentions, we thoroughly discussed why the proposed transfer is in the public interest in the Decision. As we explained, the pipeline and facilities are not in use, but:

> ratepayers continue to fund ongoing maintenance activities and have the normal liabilities associated with owning these assets, including the potential future liabilities associated with decommissioning…. Once the application is approved, however, PG&E's ratepayers will be relieved of these ongoing costs and future liabilities….

(Decision, at p. 18.) The Decision continues that the benefits to public also extend to creating the potential for "currently wasted assets to be utilized." Among these benefits are the potential for SCVHG to remediate the pump station site, possible new jobs and

[1] Unless otherwise noted, all section references are to the Public Utilities Code.

new homes, and SPBPC having the opportunity to return an idle oil pipeline to useful service. (Decision, at p. 19.)

None of these public benefits of the project are in dispute, and in fact, Chevron does not challenge these findings. We note that there is ample support for the public interest findings in the uncontroverted assertions in applications themselves, PG&E's Proponent's Environmental Assessment ("PEA") and subsequent Supplements to those documents.

Chevron argues that our consideration of section 851 applications needs to focus on the usefulness of the property, the ratemaking treatment afforded the transaction, and the environmental consequences of the sale. (App. for Rehearing, at p. 2.) However, it fails to show any manner in which the Decision neglects to do this. Environmental issues are discussed in the next section,[2] but there is no controversy here about the usefulness of the property to PG&E, or the ratemaking treatment of the transaction. We adequately considered both of those topics in the Decision. (Decision, at pp. 18-20.) In fact, Chevron does not challenge these holdings in any manner.

Rather, Chevron contends that we lack sufficient information regarding the future uses of the pipeline and pump station assets. However, beyond environmental concerns, which are discussed below, the future uses of the property are mainly relevant to our section 851 duty to "prevent impairment of the public service a utility by the transfer its property…." (*So. Cal. Mountain Water Co.* (1912) 1 C.R.C. 520, 524.) Where, as here, the property has not been in use by the utility prior to the transfer we have little cause for concern that utility service will be impaired. Chevron's proposed standard, that there be complete certainty about any future use of property prior to allowing a utility to transfer it, would be unworkable in many cases. Moreover, it is beyond the scope of our required review pursuant to section 851.

[2] The analysis of whether a project is in the public interest environmentally is handled through the CEQA process pursuant to State law.

For these reasons, our conclusion that PG&E's proposed transfer is in the public interest pursuant to section 851 is adequately supported.

B. Environmental Review

Chevron also alleges that our consideration of the environmental consequences of the pipeline and pump station transfer was inadequate, and did not comply with the California Environmental Quality Act ("CEQA"). In particular, Chevron maintains that we erred in preparing a Mitigated Negative Declaration ("MND") rather than an Environmental Impact Report ("EIR"), and that we improperly deferred consideration of environmental consequences of the transaction. These arguments are unconvincing.

Pursuant to CEQA, an agency must prepare an EIR before it approves a project if there is substantial evidence, in light of the whole record, that the project may have a significant effect on the environment. (Pub. Resources Code, § 21080 (d).) If a project will not have a significant effect on the environment, the agency may prepare a Negative Declaration ("ND"), a shorter document explaining that there is no significant impact associated with the project, in lieu of an EIR. (Pub. Resources Code, § 21080 (c).) An agency can prepare a MND where, as here, measures avoiding significant impacts are agreed to by the project proponent and incorporated into the proposed project prior to the project's review. (CEQA Guidelines, § 15371.)

In this case, Chevron contends we erroneously prepared a MND rather than an EIR, because we omitted analysis of "critical project components, and their potential environmental impacts." (App. for Rehearing, at p. 5.) According to Chevron, we avoided an EIR and impermissibly "piecemealed" the project by deferring consideration of impacts such as facilities that would be necessary to restore the pipeline to operation, tie-ins, new pumping stations, and the impact of transporting different fuel oil products. Chevron argues, "analysis of project impacts cannot be deferred until after project approval under the guise of 'mitigation'…." (App. for Rehearing, at p. 7.)

As the Decision and the Respondents[3] correctly note, *National Parks and Conservative Association v. County of Riverside* ("*Riverside*") (1996) 42 Cal.App. 4th 1505, provides relevant guidance concerning whether facilities that could potentially be connected to a proposed project need be considered in the CEQA process. In *Riverside*, the Petitioners argued that an EIR for a landfill was defective because it failed to consider prospective materials recovery facilities ("MRF") which would be needed. The Court concluded that review of support facilities is not required where:

> (1) obtaining more detailed useful information is not meaningfully possible at the time when the EIR for the project is prepared, and (2) it is not necessary to have such additional information at an earlier stage in determining whether or not to proceed with the project.

(*Riverside*, at p. 1508.)

The MND looks at the foreseeable related environmental impacts of the transfer, such as the construction of replacement pipeline.[4] However, as we explained in the Decision, many of the other future plans for the property are unknown at this time and cannot be meaningfully analyzed. SCVHG has no concrete plan yet regarding remediation, and SPBPC does not have information about the need and locations for tie-in points and pumping stations. This case is a transfer of ownership case, unlike development or construction cases cited by Chevron.[5] It is neither surprising nor unreasonable that a seller or buyer of property will not have complete information about all the future uses of that property. As in *Riverside*, meaningful information about events likely to follow from the project under review does not yet exist, and is unnecessary for the review of the proposed transfer transaction. Such a standard would be a tremendous

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[3] SPBPC, SCVHG, PG&E, and Shell ("Respondents") filed a joint response to Chevron's application.

[4] Contrary to Chevron's suggestions (App. for Rehearing, at p. 6), SPBPC can only transport certain fuel types, unless a subsequent proposal is environmentally reviewed and approved by the Commission. (See Decision, O.P. 5.)

[5] See e.g. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296 [construction of a sewage plant]; *San Joaquin Raptor Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 714 [housing development].

impediment to a utility's ability to transfer property. Moreover, the new owners will need to have future construction and/or development plans reviewed as required pursuant to CEQA (Decision, at p.19).

II. CONCLUSION

Because Chevron has failed to demonstrate that the Decision is in error, its application for rehearing is denied. No further discussion of Chevron's allegations is warranted.

Therefore **IT IS ORDERED** that:

1. Chevron's application for rehearing of D.05-07-016 is denied.
2. This consolidated proceeding is closed.

This order is effective today.

Dated September 22, 2005 at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners

Comr. Bohn recused himself
from this agenda item and was not
part of the quorum in its consideration.